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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,133	07/25/2003	James M. Biggerstaff	Bigger 0503-01	3926
26639	7590	10/27/2005		
JAMES R. HEAD 28926 SOUTH 593 RD. GROVE, OK 74344			EXAMINER HOEY, ALISSA L	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 10/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/627,133	Applicant(s) BIGGERSTAFF, JAMES M.	
	Examiner Alissa L. Hoey	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 22 July 2005.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 5-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8 is/are allowed.
- 6) ☒ Claim(s) 9-11 is/are rejected.
- 7) ☒ Claim(s) 1,2 and 5-7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

1. This is in response to amendment received on 07/22/05. Claim 1 has been amended and claims 9-11 have been newly added. Claims 1, 2 and 5-11 are rejected below.

### ***Specification***

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: new claim 9, recites a "single piece" of flexible material and the specification does not discuss the flexible material consisting of a single piece.

### ***Claim Objections***

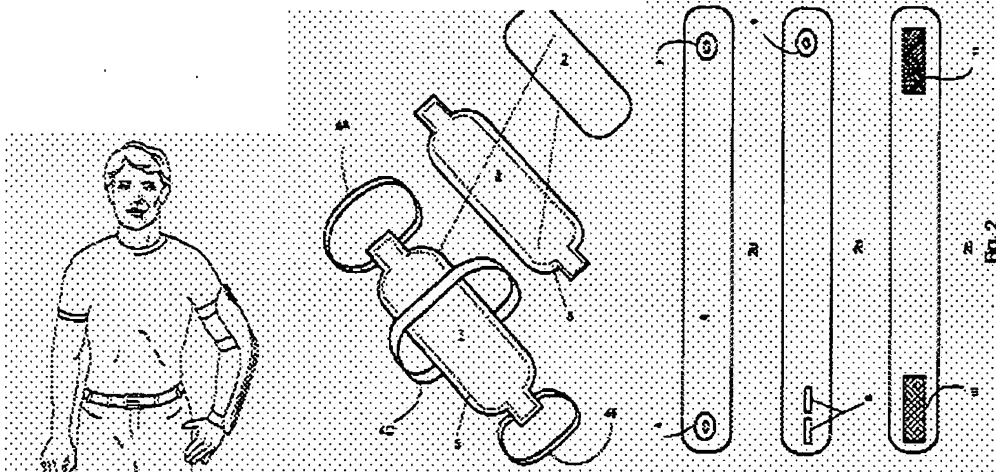
3. Claim 1 is objected to because of the following informalities: in line 8 should "said" be inserted before "limb"? Appropriate correction is required.
4. Claim 9 is objected to because of the following informalities: in line 2, should one ",", be deleted after "join"? Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Faison (US 6,243,867).



In regards to claim 9, Faison provides a garment having a piece of flexible material (1) covering the top portion of the limb of a user. The material (1) being supported by spaced first and second elastic bands (4B, 4C), leaving the portion of the limb below the flexible material (1) to receive unobstructed air circulation around the portion of the limb. The piece of flexible material (1) is capable of protecting the top portion of the user's arm covered by the flexible material from the sun's rays. The portion of the limb of the user being protected is essentially a radius portion of the human forearm between a wrist and an elbow (column 2, lines 57-67). The first elastic band (4B) is contiguous to the wrist and the second elastic band (4C) is contiguous to the elbow joint of the user (figure 3).

However, Faison fails to teach the flexible piece of material being a single piece of material. It would have been obvious to one having ordinary skill in the art to have provided the flexible piece of material being a single piece of material or a layered

material, because as long as the flexible material blocks sun from the user's skin the layering of the material can any as desired.

7. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faison in view of Edwards et al. (US 6,037,280).

Faison provides an arm band as described above in claim 9 and further includes ornamental or informational design located thereon. However, Faison fails to teach the arm band providing at least 30 SPF sun block protection.

Edwards et al. provides a fabric containing ultraviolet ray blocking particles (column 2, lines 10-15). The fabric can be used to make articles of clothing and the UV blocking fabric has an SFP value of at least 25 (column 2, lines 15-19 and column 24-25).

It would have been obvious to have provided the arm band of Faison with the fabric material containing SPF protection of Edwards, since the arm band of Faison having one of it's layers constructed of a UV blocking fabric having an SPF value of at least 25 would provide an arm band that can not only wipe perspiration from the user's body but also protect the user's arm from harmful UV rays.

#### ***Allowable Subject Matter***

8. Claims 1, 2 and 5-7 are objected as detailed above, but allowable over prior art.
9. Claim 8 is allowed.

#### ***Response to Arguments***

10. Applicant's arguments filed 07/22/05 have been fully considered but they are not persuasive.

I) Applicant argues that Faison fails to teach the protector that covers the top portion of the forearm.

Examiner notes that Faison covers a portion of the top of the user's forearm as required by the claim see Faison figure 3.

II) Applicant argues that the device of Faison is made up of three layers of material and not a single piece of material.

Examiner notes that the specification states no critical nature of the flexible material comprising only a single layer of fabric material.

III) Applicant argues that Faison teaches bands or straps that are not contiguous to the elbow.

Examiner notes that the elastic bands of Faison can be continuous loops (Faison: column 3, lines 18-33). Figure 3 of Faison shows that band being contiguous to the elbow.

### ***Conclusion***

11. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

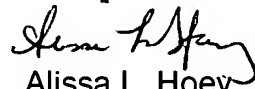
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30) Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Alissa L. Hoey  
Patent Examiner  
Technology Center 3700